Supreme Court, U. S.
FILED
OCT 31 1980
MICHAEL RODAK, JR., CLERK

NO. 80-226

In the Supreme Court of the United States

OCTOBER TERM, 1979

EDWARD CHARLES JACKSON,
Defendant-Petitioner

VERSUS

STATE OF LOUISIANA
Plaintiff-Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF LOUISIANA

RESPONSE IN OPPOSITION TO WRIT OF CERTIORARI

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IN THE
SUPREME COURT OF THE UNITED STATES

NO. 80-226

EDWARD CHARLES JACKSON
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STATE OF LOUISIANA
Plaintiff-Respondent

REPLY BRIEF IN OPPOSITION TO WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

The State of Louisiana, plaintiff-respondent herein, prays that this court deny the issuance of a Writ of Certiorari to review the judgment and decision of the Supreme Court of the State of Louisiana affirming the convictions of Edward Charles Jackson for two counts of aggravated rape and one count of aggravated burglary in the Fourth Judicial District Court, Ouachita Parish, Louisiana.

JURISDICTION

Plaintiff-respondent states that the question presented by petitioner does not invoke the jurisdiction of this Court for the reasons hereinafter set forth.

REASONS FOR DENIAL OF THE WRIT

Petitioner questions the constitutional validity of a non-unanimous jury verdict in regard to his convictions of two counts of aggravated rape and one count of aggravated burglary. One juror voted for acquittal on the aggravated rape counts and another juror voted for acquittal on the aggravated burglary count, thus resulting in a 11-1 vote on each offense.

In *Johnson v. Louisiana,* 406 U.S. 356, 92 S.Ct. 1635, 32 L. Ed. 2d 152 (1972), this court held a conviction by a vote of nine of twelve jurors did not deprive the defendant of his constitutionally guaranteed right to trial by jury. At that time, the Louisiana Constitution and statutes permitted convictions or acquittals by votes of at least nine members of the jury in criminal cases where the punishment was necessarily at hard labor. Subsequent to the decision in the *Johnson* case, a new Louisiana Constitution was adopted which required the concurrence of at least ten members of the jury in order to return a verdict in these cases. Article 1, Section 17 of the Louisiana Constitution of 1974 provides:

> "A criminal case in which the punishment may be capital shall be tried before a jury of twelve persons, all of whom must concur to render a verdict. A case in which the punishment is necessarily confinement at hard labor

> shall be tried before a jury of twelve persons, ten of whom must concur to render a verdict. . . ."

Apodaca v. Oregon, 406 U.S. 404, 92 S. Ct. 1628, 32 L.Ed. 2d 184 (1972), was decided concurrently with the decision in the Johnson case, and upheld an Oregon statute which permitted 10-2 jury verdicts in some criminal cases. The court said:

> "Our inquiry must focus upon the function served by the jury in contemporary society. *Cf. Williams v. Florida, supra*, at 99-100, 90 S.Ct., at 1905. As we said in Duncan, the purpose of trial by jury is to prevent oppression by the Government by providing a "safeguard against the corrupt or overzealous prosecutor and against the complaint, biased, or eccentric judge." *Duncan v. Louisiana*, 391 U.S., at 156, 88 S.Ct. , at 1451. "Given this purpose, the essential feature of a jury obviously lies in the interposition between the accused and his accuser of the commensense judgment of a group of laymen . . ." *Williams v. Florida, supra*, 399 U.S., at 100, 90 S.Ct., at 1906. A requirement of unanimity, however, does not materially contribute to the exercise of this commonsense judgment. As we said in *Williams*, a jury will come to such a judgment as long as it consists of a group of laymen representative of a cross section of the community who have the duty and the opportunity to deliberate, free from outside attempts at intimidation, on the question of a defendant's guilt. In terms of this function we perceive no difference between juries required to act unanimously and those permitted to convict or acquit by votes of 10 to two or

> 11 to one. Requiring unanimity would obviously produce hung juries in some situations where nonunanimous juries will convict or acquit. But in either case, the interest of the defendant in having the judgment of his peers interposed between himself and the officers of the State who prosecute and judge him is equally well served."

Petitioner argues the decision in *Burch v. Louisiana*, 441 U.S. 130, 99 S. Ct. 1623, 60 L. Ed. 2d 96 (1979), lends support to his position. *Burch* struck down Louisiana constitutional and statutory provisions allowing less than unanimous verdicts in cases where the traditional twelve member jury was reduced to six members. The court stated:

> "However, much the same reasons that led us in Ballew to decide that use of a five-member jury threatened the fairness of the proceeding and the proper role of the jury, lead us to conclude now that conviction for a nonpetty offense by only five members of a six-person jury presents a similar threat to preservation of the substance of the jury trial guarantee and justifies our requiring verdicts rendered by six person juries to be unanimous. We are buttressed in this view by the current jury practices of the several States. It appears that of those States that utilize six-member juries in trials of nonpetty offenses, only two, including Louisiana also allow nonuninanimous verdicts. We think

> that this near-uniform judgment of the Nation provides a useful guide in delimiting the line between those jury practices that are constitutionally permissible and those that are not." Authorities omitted.

It is submitted that the reasoning in *Burch* was limited to the problem at issue, and was not meant to indicate a re-examination of the issues decided by *Johnson and Apodaca.*

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Honorable Supreme Court of the United States should deny the Petition for Writ of Certiorari filed herein.

RESPECTFULLY SUBMITTED,

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BY: _____
JOHN R. HARRISON

CERTIFICATE

It hereby is certified that a copy of the foregoing Response was this day served upon Mr. John Taylor Bentley, Attorney for Defendant, 115 North Franklin Street, Bastrop, Louisiana, 71220, by depositing same in the United States mail, postage prepaid.

MONROE, LOUISIANA, this 30th day of October, 1980.

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